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DEPARTMENT OF COMMERCE

International Trade Administration

A-570-112 and C-570-113

Certain Collated Steel Staples from the People's Republic of China: Preliminary Affirmative Determinations of Critical Circumstances in the Antidumping and Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that critical circumstances exist with respect to certain imports of certain collated steel staples (collated staples) from the People's Republic of China (China).

DATES: Applicable [Insert date of publication in the *Federal Register*].

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SUPPLEMENTARY INFORMATION:

Background

On June 6, 2019, Commerce received antidumping (AD) and countervailing duty (CVD) petitions concerning imports of collated staples from China filed in proper form on behalf of

Kyocera Senco Industrial Tools, Inc. (the petitioner).¹ On July 3, 2019, Commerce initiated the AD and CVD investigations of collated staples from China.²

In the AD investigation, Commerce selected Tianjin Jin Xin Sheng Long Metal Products Co., Ltd. (Tianjin JXSL) and Tianjin Hweshcun Fasteners Manufacturing Co., Ltd. (Tianjin Hweshcun) as mandatory respondents for individual examination.³ In the CVD investigation, Commerce selected Hai Sheng Xin Group Co., Ltd. (Xin Group), Zhejiang Best Nail Industrial Co., Ltd. (Best Nail),⁴ and Ningbo Deli Stationery (Ningbo Deli) as mandatory respondents for individual examination.⁵ On September 17, 2019, the petitioner alleged that critical circumstances exist with respect to imports of collated staples from China, pursuant to sections 703(e)(1) and 733(e)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.206.⁶ On October 11 and 15, 2019, the petitioner filed a supplement to its critical circumstances allegation for the AD and CVD investigations, respectively.⁷

In accordance with 19 CFR 351.206(c)(2)(i), if the petitioner submits an allegation of critical circumstances more than 20 days before the scheduled date of the preliminary determination, Commerce must issue a preliminary finding whether there is a reasonable basis to

¹ See Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Collated Steel Staples from Korea, the People's Republic of China, and Taiwan," dated June 6, 2019 (the Petition).

² See *Certain Collated Steel Staples from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 84 FR 31840 (July 3, 2019); and *Certain Collated Steel Staples from the People's Republic of China, the Republic of Korea, and Taiwan: Initiation of Less-Than-Fair-Value Investigations*, 84 FR 31833 (July 3, 2019).

³ See Memorandum, "Less-Than-Fair-Value Investigation of Collated Steel Staples from the People's Republic of China: Respondent Selection," dated July 30, 2019.

⁴ See Memorandum, "Countervailing Duty Investigation of Certain Collated Steel Staples from the People's Republic of China: Respondent Selection," dated July 26, 2019.

⁵ See Memorandum, "Countervailing Duty Investigation of Certain Collated Steel Staples from the People's Republic of China: Additional Respondent Selection," dated August 19, 2019.

⁶ See Petitioner's Letter, "Certain Collated Steel Staples from the People's Republic of China: Allegation of Critical Circumstances," dated September 17, 2019 (Critical Circumstances Allegation).

⁷ See Petitioner's Letter, "Certain Collated Steel Staples from the People's Republic of China: Supplement to Critical Circumstances Allegation {AD}," dated October 11, 2019 (Petitioner Supplement to AD Allegation); *see also* Petitioner's Letter, "Certain Collated Steel Staples from the People's Republic of China: Supplement to Critical Circumstances Allegation {CVD}," dated October 15, 2019.

believe or suspect that critical circumstances exist by no later than the date of the preliminary determination.⁸ In these AD and CVD investigations, the petitioner requested that Commerce issue preliminary critical circumstances determinations on an expedited basis.⁹

Section 703(e)(1) of the Act provides that Commerce, upon receipt of a timely allegation of critical circumstances, will preliminarily determine that critical circumstances exist in CVD investigations if there is a reasonable basis to believe or suspect that: (A) the alleged countervailable subsidy is inconsistent with the Subsidies and Countervailing Measures (SCM) Agreement of the World Trade Organization; and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 733(e)(1) of the Act provides that Commerce, upon receipt of a timely allegation of critical circumstances, will preliminarily determine that critical circumstances exist in AD investigations if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

Sections 351.206(h)(2) and (i) of Commerce's regulations provide that imports must increase by at least 15 percent during the "relatively short period" to be considered "massive" and defines a "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later.

⁸ The preliminary determination for the AD investigation is currently due no later than November 19, 2019, and the preliminary determination for the CVD investigation is currently due no later than November 4, 2019.

⁹ See Critical Circumstances Allegation at 2-3.

Commerce's regulations also provide, however, that if Commerce finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from that earlier time.¹⁰

Critical Circumstances Analysis

Alleged Countervailable Subsidies are Inconsistent with the SCM Agreement

To determine whether an alleged countervailable subsidy is inconsistent with the SCM Agreement, in accordance with section 703(e)(1)(A) of the Act, Commerce considered the evidence currently on the record of the CVD investigation. Specifically, as reflected in the initiation checklist, the following subsidy programs, alleged in the Petition and supported by information reasonably available to the petitioner, appear to be export contingent, which would render them inconsistent with the SCM Agreement:¹¹

- Export Loans from Chinese State-Owned Banks
- Export Seller's Credit
- Export Buyer's Credit
- Export Credit Insurance Subsidies
- Export Credit Guarantees
- Subsidies for the Development of Famous Brands and China World Top Brands
- SME International Market Exploration Fund
- Export Assistance Grants
- Export Interest Subsidies for Enterprises Located in Zhejiang Province

Therefore, Commerce preliminarily determines that there is a reasonable basis to believe or suspect that alleged subsidies in the CVD investigation are inconsistent with the SCM Agreement.

¹⁰ See 19 CFR 351.206(i).

¹¹ See CVD Initiation Checklist: Certain Collated Steel Staples from the People's Republic of China, dated June 26, 2019.

History of Dumping and Material Injury/Knowledge of Sales Below Fair Value and Material Injury

To determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, Commerce generally considers current or previous AD orders on subject merchandise from the country in question in the United States and current orders imposed by other countries regarding imports of the same merchandise. However, in the Critical Circumstances Allegation, the petitioner did not provide information on the history of dumping.¹²

To determine whether importers knew or should have known that exporters were selling the subject merchandise at less than fair value pursuant to section 733(e)(1)(A)(ii) of the Act, we typically consider the magnitude of dumping margins, including margins alleged in the petition.¹³ Commerce has found margins of 15 percent or more (for constructed export price) to 25 percent or more (for export price) to be sufficient for this purpose.¹⁴ The dumping margins of 119.37 percent and 122.55 percent alleged in the AD Petition significantly exceed the 15 to 25 percent threshold.¹⁵ Therefore, on that basis, we preliminarily conclude importers knew, or should have known, that exporters in China were selling at less than fair value (LTFV).

¹² See Critical Circumstances Allegation at 4-5.

¹³ See, e.g., *Notice of Preliminary Determinations of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation*, 67 FR 19157, 19158 (April 18, 2002), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Australia*, 67 FR 47509 (July 19, 2002), *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from the People's Republic of China*, 67 FR 62107 (October 3, 2002), *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from India*, 67 FR 47518 (July 19, 2002), *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Korea*, 67 FR 62124 (October 3, 2002), *Notice of Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from The Netherlands*, 67 FR 62112 (October 3, 2002), and *Notice of the Final Determination Sales at Less Than Fair Value and Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from the Russian Federation*, 67 FR 62121 (October 3, 2002).

¹⁴ *Id.*

¹⁵ See Petitioner's Letter, "Certain Collated Steel Staples from China: Petition Supplement," dated June 14, 2019, at Exhibit 9.

To determine whether importers knew, or should have known, that there was likely to be material injury caused by reason of such imports pursuant section 733(e)(1)(A)(ii) of the Act, Commerce normally will look to the preliminary injury determination of the International Trade Commission (ITC).¹⁶ If the ITC finds a reasonable indication of material injury to the relevant U.S. industry, Commerce will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of such imports. In these investigations, the ITC found that there is a “reasonable indication” of material injury to the domestic industry because of the imported subject merchandise.¹⁷ Therefore, the ITC’s preliminary injury determination in the AD investigation is sufficient to impute importer knowledge.

Massive Imports

In determining whether there are “massive imports” over a “relatively short period,” pursuant to sections 703(e)(1)(B) and 733(e)(1)(B) of the Act, Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the base period) to a comparable period of at least three months following the filing of the petition (*i.e.*, the comparison period).¹⁸ Imports will normally be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.¹⁹

¹⁶ See, e.g., *Antidumping and Countervailing Duty Investigations of Certain Softwood Lumber Products from Canada: Preliminary Determinations of Critical Circumstances*, 82 FR 19219, 19220 (April 26, 2017) (*Softwood Lumber from Canada Preliminary Critical Circumstances Determination*), unchanged in *Certain Softwood Lumber Products from Canada: Final Affirmative Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 82 FR 51806, 51807-08 (November 8, 2017) (*Softwood Lumber from Canada Final AD Determination*).

¹⁷ See *Certain Collated Steel Staples from China, Korea, and Taiwan: Investigation Nos. 701–TA–626 and 731–TA–1452–1454 (Preliminary)*, 84 FR 35884 (July 25, 2019).

¹⁸ See *Softwood Lumber from Canada Preliminary Critical Circumstances Determination*, 82 FR at 19220, unchanged in *Softwood Lumber from Canada Final AD Determination*, 82 FR at 51807-08.

¹⁹ *Id.*

Accordingly, to determine preliminarily whether there has been a massive surge in imports for each participating mandatory respondent which provided shipment data, including Tianjin JXSL, Commerce compared the total volume of shipments from June 2019 through August 2019, the comparison period (*i.e.*, all months for which shipment data was available), with the preceding three-month period of March 2019 through May 2019, the base period. Although the petitioner argued that Commerce should use a two-month comparison period for its analysis with respect to Tianjin JXSL,²⁰ our preference is to use at least a three-month comparison period.²¹ There is no such evidence on the record of the AD or CVD proceeding.

Regarding the CVD investigation, for all others, Commerce compared Global Trade Atlas (GTA) data for the period June 2019 through August 2019 with the preceding three-month period of March 2019 through May 2019,²² after subtracting from the GTA data shipments reported by the mandatory respondents which provided such data. Similarly, regarding the AD investigation, for non-individually examined companies requesting separate rate status, we performed the same comparison. For those respondents in either the CVD or AD investigation that are not participating in the investigation, we preliminarily determine, on the basis of adverse facts available,²³ that there has been a massive surge in imports. Accordingly, based on our analysis of the information on the record, we preliminarily determine that certain producers/exporters of collated staples from China had massive surges in imports.²⁴

Based on the criteria and findings discussed above, we preliminarily determine in the AD investigation that critical circumstances exist with respect to imports of collated staples from

²⁰ See Petitioner Supplement to AD Allegation at 6-8.

²¹ See 19 CFR 351.206(h)(2)(i).

²² Commerce gathered GTA data under the following harmonized tariff schedule number: 8305.20.00.

²³ See section 776 of the Act.

²⁴ See Memorandum, “Certain Collated Steel Staples from the People’s Republic of China: Preliminary Massive Imports Analysis,” dated concurrently with this notice.

China shipped by Tianjin Hweshcun and all other producers and exporters except Tianjin JXSL. Additionally, we preliminarily determine in the CVD investigation that critical circumstances exist with respect to imports of collated staples from China shipped by Best Nail, Xin Group, Ningbo Deli, and all other producers and exporters.

Final Critical Circumstances Determinations

We will issue our final determinations concerning critical circumstances when we issue our final CVD and AD determinations. All interested parties will have the opportunity to address these determinations in case briefs to be submitted after the issuance of the preliminary CVD and AD determinations. Commerce will specify the applicable deadlines at a later date.

ITC Notification

In accordance with sections 703(f) and 733(f) of the Act, we will notify the ITC of these preliminary determinations of critical circumstances.

Suspension of Liquidation

In accordance with section 703(e)(2) of the Act, because we have preliminarily found that critical circumstances exist with regard to imports from all producers and exporters of collated staples from China, if we make an affirmative preliminary determination that countervailable subsidies have been provided to these same producers/exporters at above *de minimis* rates, we will instruct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of subject merchandise from these producers/exporters that are entered, or withdrawn from warehouse for consumption, on or after the date that is 90 days prior to the effective date of provisional measures (*e.g.*, the date of publication in the *Federal Register* of the notice of an affirmative preliminary determination that countervailable subsidies have been provided at above *de minimis* rates). At such time, we will also instruct CBP to require a cash deposit equal to the

estimated preliminary subsidy rates reflected in the preliminary determination published in the *Federal Register*. The suspension of liquidation will remain in effect until further notice.

In accordance with section 733(e)(2) of the Act, because we have preliminarily found that critical circumstances exist with regard to imports from certain producers and exporters of collated staples from China, if we make an affirmative preliminary determination that sales at LTFV have been made by these same producers/exporters at above *de minimis* rates, we will instruct CBP to suspend liquidation of all entries of subject merchandise from these producers/exporters that are entered, or withdrawn from warehouse, for consumption on or after the date that is 90 days prior to the effective date of provisional measures (*e.g.*, the date of publication in the *Federal Register* of the notice of an affirmative preliminary determination of sales at LTFV at above *de minimis* rates). At such time, we will also instruct CBP to require a cash deposit equal to the estimated preliminary dumping margins reflected in the preliminary determination published in the *Federal Register*. The suspension of liquidation will remain in effect until further notice.

Notification to Interested Parties

These determinations are issued and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.206(c)(2).

Dated: October 24, 2019

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

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